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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF ARIZONA**

8 Emilio Dominguez-Roman, )

9 Petitioner, )

10 v. )

11 United States of America, )

12 Respondent. )

CR 05-1078 TUC-DCB  
CV 05-614 TUC-DCB

13 **ORDER**

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15 Pending before this Court is Emilio Donguez-Roman's ("Petitioner") "Motion for  
16 Time Reduction by an Inmate in Federal Custody. (28 U.S.C. § 2255)" ("Petition"). For  
17 the reasons set forth below, Petitioner is not entitled to relief.

18 **BACKGROUND**

19 On September 8, 2004, Petitioner, an alien, pleaded guilty to violating Title 21,  
20 U.S.C. § 841(a)(1) and 841(b)(1)(B)(vii), for possession with intent to distribute 100 to  
21 1,000 kilograms of marijuana. On October 3, 2005, pursuant to a plea agreement,  
22 Petitioner was sentenced by this Court to 30 months imprisonment, 36 months supervised  
23 release, and a \$100.00 special assessment.

24 Petitioner filed this Petition on October 14, 2005, wherein he alleges he, as an  
25 illegal alien, is subject to disparate treatment, in violation of the First, Sixth, Seventh and  
26 Fourteenth Amendments to the Constitution. (Petition, pp. 1-2.) Petitioner alleges that,  
27 due to his alien status, he is prohibited from participating in certain Bureau of Prisons  
28 ("BOP") benefits and programs. (*Id.*) Furthermore, Petitioner alleges that, due to his

1 alien status, he is forced to serve a more difficult sentence and seeks a reduction thereof.  
2 (*Id.*) Accordingly, Petitioner files his Motion for Time Reduction seeking habeas corpus  
3 relief, pursuant to 28 U.S.C. § 2255.

#### 4 PROCEDURE

5 Pursuant to 28 U.S.C. § 2255, a petition for writ of habeas corpus should be  
6 presented to the court which imposed the allegedly improper sentence. 28 U.S.C. § 2255.  
7 According to Rule 4(a) of the Rules Governing Section 2255 Proceedings, the petition  
8 *shall* be directed to the judge who sentenced the petitioner. Rule 4(a), Rules Governing  
9 Section 2255 Proceedings. Therefore, this Court considers Petitioner's Petition.

10 Ordinarily, a court must conduct a hearing on a petition unless it "and the files  
11 and records of the case conclusively show that the petitioner is entitled to no relief ...."  
12 28 U.S.C. § 2255. The Petition, as well as the files and records, conclusively establish  
13 that Petitioner is not entitled to relief. Therefore, no hearing is required to rule on the  
14 present Petition. For the same reasons, this Court does not require a response to the  
15 Petition from the United States Attorney. *Id.*

#### 16 DECISION

17 Liberally construing the Petition, it appears that Petitioner's sole basis for relief is  
18 his allegation of disparate treatment. Specifically, Petitioner argues, due solely to his  
19 status as a deportable alien, he is denied the benefits of 18 U.S.C. § 3624(c), through  
20 C.F.R. § 550.58. Section 3624(c) allows a prisoner to spend a portion of his sentence in  
21 a community-based program. 18 U.S.C. § 3624(c). The Bureau of Prisons ("BOP"),  
22 however, has promulgated regulations excluding prisoners with detainers, including  
23 deportable prisoners, from this statutory provision. *See, McLean v. Crabtree*, 173 F.3d  
24 1176 (9<sup>th</sup> Cir. 1999), *cert. denied*, 120 S.Ct. 814 (2000); 61 Fed.Reg. 25121; 28 C.F.R.  
25 550.58. This exclusion, according to Petitioner, results in disparate treatment as it denies  
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1 deportable aliens such as himself equal protection under the law in violation of the  
2 Constitution of the United States.

3 The Ninth Circuit has already conclusively decided that claims such as  
4 Petitioner's must fail. In *McLean*, the Ninth Circuit ruled that BOP regulations which  
5 exclude prisoners with detainers, including deportable aliens like Petitioner, from  
6 community-based programs do not violate the Constitution. *McLean*, 173 F.3d at 1185-  
7 1186. While aliens such as Petitioner are persons entitled to the protections of the Fifth  
8 and Fourteenth Amendments, the BOP regulation does not impermissibly deny aliens like  
9 Petitioner those protections since the regulation does not exclude persons based on their  
10 membership in the class of incarcerated aliens. *Id.* at 1185. Rather, the BOP exclusion  
11 applies to all prisoners with detainers lodged against them, including deportable  
12 prisoners, regardless of their race or national origin. *Id.* Since prisoners with detainers  
13 do not constitute a suspect class, and there is no evidence of discriminatory intent, the  
14 BOP regulation is valid so long as it is rationally related to a legitimate government  
15 interest. *Id.* at 1186.

16 The legitimate government interest in this case is the BOP's reasonable concern  
17 that prisoners with detainers, including deportable aliens, pose a flight risk during the  
18 community-based treatment phase of their incarceration. *Id.* The BOP regulation is "*at*  
19 *least* rationally related to the BOP's legitimate interest in preventing prisoners from  
20 fleeing detainers [including deportation] while participating in community treatment  
21 programs." *Id.* (emphasis added.) Since the BOP regulation is rationally related to this  
22 legitimate government interest, there is no violation of Petitioner's constitutional rights.

23 **Accordingly,**


24 **IT IS ORDERED** that Petitioner's Motion for Time Reduction by an Inmate in  
25 Federal Custody (28 U.S.C. § 2255), (Document 17) filed in CR 05-1078 TUC DCB and  
26 (Document 1) filed in CV 05-614 TUC DCB is DENIED.

1           **IT IS FURTHER ORDERED** that Civil case number CV 05-614 TUC-DCB is  
2 DISMISSED with prejudice.

3           **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment  
4 accordingly.

5           DATED this 4<sup>th</sup> day of November, 2005.

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David C. Bury  
United States District Judge